



**International Covenant
on Civil and
Political Rights**

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HUMAN RIGHTS COMMITTEE

Forty-fourth session

SUMMARY RECORD OF THE 1122nd MEETING

Held at Headquarters, New York,
on Monday, 23 March 1992, at 3 p.m.

Chairman: Mr. POCAR

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 3.35 p.m.

ELECTION OF A VICE-CHAIRMAN

1. Mr. NDIAYE nominated Mr. El-Shafei for the office of Vice-Chairman, to replace Mr. Wako who had relinquished his post.
2. Mr. MAVROMMATIS seconded the nomination.
3. Mr. El-Shafei was elected Vice-Chairman by acclamation.

ORGANIZATIONAL AND OTHER MATTERS (continued)

Draft general comment regarding article 10 of the Covenant (CCPR/C/42/CRP.3)

4. Miss CHANET said that the document before the Committee had been prepared by the Working Group on Article 40 of the Covenant in July 1991 on the basis of the discussion of her original draft at the 1056th and 1060th meetings. She referred the Committee to her previous detailed introduction of the draft general comment (see CCPR/C/SR.1056/Add.1). Like the draft general comment on article 7 of the Covenant, the draft general comment on article 10 was a rewriting of an existing general comment, taking into account what the Committee had learned from its consideration of country reports as well as evolving legal requirements and the entry into force of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Committee would be interested to know that article 10 of the Covenant was currently being studied by the Council of Europe, which was considering including it as an additional protocol to the European Convention on Human Rights; and the Committee's draft general comment would therefore be especially useful to the European negotiators.

5. The CHAIRMAN invited the Committee to discuss the text paragraph by paragraph.

Paragraph 1

6. The CHAIRMAN suggested that it should be indicated at the outset that the draft general comment replaced an earlier general comment on the same article of the Covenant.

7. Mr. DIMITRIJEVIĆ, supported by Mr. NDIAYE, said that he saw no reason to cite the relevant provision of article 10 of the Covenant in paragraph 1 or, indeed, elsewhere in the text.

8. Miss CHANET proposed accordingly that paragraph 1 of the text should be deleted and replaced by the following paragraph: "This general comment replaces general comment 9 (16), reflecting and further developing it."

9. Paragraph 1, as amended, was adopted.

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Paragraphs 2 and 3

10. Mr. NDIAYE, supported by Miss CHANET, proposed that paragraphs 2 and 3 should be combined.
11. Mr. WENNERGREN, noting that article 10, paragraph 1, of the Covenant did not as a matter of law supplement article 7 but did so only in respect of persons deprived of liberty, suggested that the words "for them" should be added after the word "supplements" in paragraph 2, line three.
12. With regard to paragraph 3, he felt that detained persons were in constant danger of being subjected not merely to the "suffering or constraint" referred to in line 3 but also to contemptuous treatment that offended their dignity as human beings and he therefore proposed adding the word ", scorn" after the word "suffering".
13. Mr. PRADO VALLEJO concurred and suggested that the text should give fuller treatment to the obligation of States to prevent certain types of behaviour and treatment by guards that would violate the dignity of prisoners and that were more subtle than actual physical punishment.
14. Mr. MÜLLERSON supported Mr. Wennergren's suggestion regarding paragraph 3. As to the "constraint" referred to in paragraph 3, line 3, it was conceivably outside the scope of article 10, paragraph 1, which did not speak at all of constraint. He wondered what kinds of constraint were intended and whether they might not instead violate article 25 or other articles of the Covenant.
15. Miss CHANET noted that persons deprived of liberty were necessarily under constraint, hence the need for specific prohibition of suffering or constraint other than what was inherent in the deprivation of liberty. Since it was further stipulated that persons deprived of their liberty enjoyed all the rights set forth in the Covenant subject to the restrictions strictly necessary in a closed environment, there was no danger that States would misinterpret the Committee's general comment.
16. The general comment called for the dignity of persons deprived of their liberty to be respected. Scorn was a form of affront to dignity, and to specify it, as proposed by Mr. Wennergren, would tend to limit the generality of such affronts.
17. Mr. DIMITRIJEVIĆ was concerned that the Committee should not add to the Covenant too many elements from other instruments, including the Standard Minimum Rules. Moreover, the Committee's role was to question States on their implementation of the rules, and not to judge it.
18. Article 10 applied to all forms of deprivation of liberty; accordingly the word "prisoners" should be replaced by "persons deprived of their liberty".

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(Mr. Dimitrijević)

19. The use of the word "suffering" in the third line of paragraph 3 was perhaps inadvisable, as it implied that suffering might be inflicted; a weaker word, such as "discomfort", might be preferable.

20. "Inherent" was perhaps not the best choice of word in the expression "inherent in the deprivation of liberty", as it implied that deprivation of liberty involved some natural or inevitable degree of constraint. However, it might be necessary to constrain a psychiatric patient, for example, more than a prisoner. Moreover, the constraints imposed should be measured against the purpose of the deprivation of liberty. Therefore, the phrase should be recast to speak of those restraints inevitable given the purpose of the deprivation of liberty or strictly related to that purpose.

21. Mr. NDIAYE agreed that "inherent in" was not quite the right expression and suggested that it might be more appropriate to say "resulting from".

22. Mr. MAVROMMATIS applauded that suggestion and said that he could also agree to changing the word "suffering", but that "discomfort" was too weak. Some alternative should be found to the phrase "organizing life" in the last sentence as it might invite restrictions, for instance, on family visits to prisoners.

23. With regard to paragraph 2, he questioned the use of the word "supplements" which seemed to suggest that something was lacking in article 7. Such was not the case, as article 10 and article 7 together amounted to a total code of conduct for the treatment of prisoners.

24. The CHAIRMAN noted that the general comment on article 7, in referring to article 10, said that the provisions of article 7 were complemented by those of article 10. The same wording could be adopted for the general comment under discussion.

25. If paragraph 2 spoke of not an express but a positive obligation it would be better linked to article 7.

26. Miss CHANET noted that paragraph 1 referred to "persons deprived of their liberty" but that in paragraph 3 the words used were "detained persons" and "prisoners"; the expression should be "persons deprived of their liberty" throughout the text except when specific reference was made to prisoners. She welcomed Mr. Ndiaye's suggestion that "inherent in" should be replaced by "resulting from". She agreed that the word "suffering" in paragraph 3 was too strong and "discomfort" too weak; some medium term should be found.

27. Mr. MAVROMMATIS suggested the word "hardship".

28. Mr. EL-SHAFEI suggested that the phrase "strictly necessary for organizing life in a closed environment" should be changed to "necessary for meeting the requirements of detention".

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29. Mr. MULLERSON concurred with Mr. El-Shafei.

30. Miss CHANET noted that since the words "detained persons" and "prisoners" had been replaced by "persons deprived of their liberty", the meaning of the paragraph should not be confined to prisons. A psychiatric hospital or other closed environment could be said to be concerned with organizing life. If the passage was to be rewritten so as to apply to all persons deprived of their liberty, the entire paragraph should be recast.

31. Mr. DIMITRIJEVIC said that any wording chosen should be applicable to all persons deprived of their liberty. Such words as "detention" should be avoided.

32. The paragraph should state that persons deprived of their liberty enjoyed all the rights set forth in the Covenant except as mandated by other considerations.

33. He suggested that the phrase "that are strictly necessary for organizing life in a closed environment" should be replaced by "subject to the restrictions unavoidable in a closed environment".

34. Mr. EL-SHAFEI supported the proposal.

35. Mr. MAVROMMATIS noted that he had some purely subjective reservations, relating, for instance, to the classification of prisoners and to restrictions in respect of certain offences. In a general comment, however, it was not possible to go into such detail, and he would gladly accept Mr. Dimitrijević's proposal.

36. The CHAIRMAN said he would take it that the Committee was prepared to adopt the changes suggested. In particular, paragraphs 2 and 3 would be combined into one and would begin with the words "Article 10, paragraph 1" rather than "This provision"; in the first line of that paragraph, "express" would be replaced by "positive"; in line 3, "supplements" would be replaced by "complements for them"; in paragraph 3, line 4 "inherent in" would be changed to "resulting from"; "prisoners" in line 6 and "detained persons" in line 1 would both be changed to "persons deprived of their liberty"; "suffering", in line 3, would provisionally be replaced by "hardship"; and the phrase "that are strictly necessary for organizing life" would be replaced, also provisionally, by "that are unavoidable".

37. It was so decided.

Paragraph 4

38. Mr. NDIAYE said that the last sentence of the paragraph appeared to contradict the second sentence, leaving the intent of the paragraph unclear. The discrimination which must be excluded related to persons deprived of liberty and not to conditions of detention, since the latter would obviously differ between developed and developing countries.

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39. Mr. EL-SHAFEI said that the second sentence meant that all persons detained must be treated with respect and dignity, and that application of that rule could not be dependent on the material resources available. The third sentence of the paragraph meant that there must be no discrimination among those detained.

40. Mr. NDIAYE said that it was important not to provide pretexts for those who would cite paucity of resources as an excuse for not treating prisoners with respect and dignity.

41. Mr. EL-SHAFEI said that the difficulty might be resolved by deleting the first part of the last sentence, which would make it clear that the ideas contained in the second and third sentences of the paragraph were quite distinct.

42. Mr. DIMITRIJEVIĆ agreed that the wording of the paragraph might offer a pretext for mistreatment of detained persons. It should be made clear that the Committee was talking about a minimum standard. That could perhaps be done by incorporating that idea into the second sentence of the paragraph, which would read "... application of this rule, as a minimum, cannot be dependent ...". The first part of the last sentence should be deleted, as suggested, and the sentence should then be reworded to read: "This rule must be applied without discrimination ...".

43. The CHAIRMAN said that the reference to article 26 seemed inappropriate, since article 26 referred to an autonomous right. It would be preferable to refer simply to articles 2 (1) and 3.

44. Mr. DIMITRIJEVIĆ agreed to that suggestion, adding that, instead of referring to articles by number, it would be preferable to incorporate their actual wording. Those who might read the text, particularly non-lawyers, would find such an approach more transparent.

45. The CHAIRMAN said that the appropriate wording would be incorporated.

46. Paragraph 4, as amended, was adopted.

Paragraph 5

47. Mr. ANDO said that the paragraph was a somewhat general provision relating to the provisions of article 10, paragraph 1, of the Covenant, and should be placed immediately after paragraph 1.

48. The CHAIRMAN and Mr. EL-SHAFEI agreed with that suggestion.

49. Mr. ANDO also agreed, adding that doing so would help clarify the scope and application of the paragraphs that followed.

50. Mr. EL-SHAFEI pointed out that the paragraph covered anyone deprived of liberty, whether by the State or other parties.

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51. The CHAIRMAN said that there were situations where a person was legally deprived of his or her liberty by a non-State entity, such as a private hospital. The question then arose of ensuring that such persons were treated with humanity.

52. Mr. EL-SHAFEI suggested that the problem could be resolved by deleting the words "i.e. to persons held against their will".

53. Mr. DIMITRIJEVIĆ said that the question of illegal deprivation of liberty fell under article 9. Paragraph 5 dealt with article 10, which was concerned with legal deprivation of liberty. The deletion proposed by Mr. El-Shafei would clarify the paragraph.

54. The CHAIRMAN suggested that the words "i.e. to persons held against their will" should be deleted and that the word "whether" would be replaced with the word "held". The paragraph, as amended, would be moved and become paragraph 2 and the following paragraphs renumbered accordingly. Under the new numbering, paragraph 1 would remain paragraph 1, paragraphs 2 and 3 would be combined as the new paragraph 3, paragraph 4 would remain paragraph 4 and paragraph 6 would become paragraph 5.

55. It was so decided.

Paragraph 6

56. Mr. HERNDL said that the words "against their will" should be deleted for the same reasons that they had been deleted from the previous paragraph.

57. Mr. NDIAYE said that the words "on their territory" should be replaced with "under their jurisdiction", in order to broaden the scope of application of the paragraph and to bring it more closely in line with the provisions of the Convention.

58. The CHAIRMAN wondered whether the word "legally" should be inserted in the paragraph, to bring it into line with the Spanish and French versions.

59. Mr. HERNDL, supported by Mr. MAVROMMATIS, said that rather than adding the word "legally" to the English text the corresponding word should be deleted from the French and Spanish versions. Including it would narrow the scope of the paragraph and risk excluding those cases where habeas corpus applied.

60. Mr. EL-SHAFEI said that the paragraph added nothing to the provisions already contained in the original paragraph 2 and could be deleted altogether.

61. Mr. DIMITRIJEVIĆ agreed that the paragraph served only to underline the assumption of the entire Convention that States were responsible for its observance. As a compromise, he suggested that the paragraph should be deleted, with the exception of the opening phrase which should be added to the original paragraph 5.

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62. Mr. MAVROMMATIS agreed with the suggestion.

63. Miss CHANET, supported by Mr. NDIAYE, said that the paragraph had been retained in order to cover States which operated private penitentiary institutions and psychiatric clinics. Under article 10 of the Convention, the responsibility of States parties also extended to such establishments and it was important to prevent any dereliction by States.

64. The CHAIRMAN suggested that the text of the paragraph should read: "The ultimate responsibility for observance of the principle stipulated in article 10, paragraph 1, lies with the States parties as regards all institutions and establishments within their jurisdiction where persons are being held", and that it should be appended to the original paragraph 5 which, under the new numbering, had become paragraph 2.

65. It was so decided.

Paragraph 7

66. Mr. ANDO said that, as references to other United Nations documents should be kept to a minimum, he was in favour of deleting the entire paragraph.

67. Mr. DIMITRIJEVIC said that the paragraph should be retained, as it was legitimate for the Committee to know the extent to which such standards were being applied, but that the wording could be softened.

68. Mr. MÜLLERSON said that the words "in this connection" should be deleted as unnecessary.

69. Miss CHANET agreed that references to other applicable rules should be kept to a minimum but said that it was important to remind States parties exactly which rules were applicable. She therefore favoured retaining the passage while toning down its peremptory language.

70. Mr. AGUILAR agreed that the paragraph should be retained as the Committee constantly referred to the standards in question and sought further information on their application from States parties. States parties should be invited to provide the information and not placed under an obligation to do so and, consequently, he suggested the wording "to what extent they are applying United Nations standards".

71. Mr. ANDO said that he had no objection to the suggestion.

72. Mr. HERNDL said that he, too, agreed with the proposed wording and suggested that the word "applicable" should be replaced by "relevant". The text would therefore read as follows: States parties should indicate ... to what extent they apply the United Nations standards relevant to the treatment of prisoners".

73. The paragraph, as orally amended, was provisionally adopted.

The meeting rose at 6.05 p.m.



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HUMAN RIGHTS COMMITTEE

Forty-fourth session

SUMMARY RECORD OF THE 1123rd MEETING

Held at Headquarters, New York,
on Tuesday, 24 March 1992, at 10 a.m.

Chairman: Mr. POCAR

CONTENTS

Organizational and other matters (continued)

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The meeting was called to order at 10.25 a.m.

ORGANIZATIONAL AND OTHER MATTERS (continued)

Methods of work of the Committee under article 40 of the Covenant

1. Mr. AGUILAR, speaking as Chairman/Rapporteur of the Working Group on article 40, said that he wished to hear the opinions of Committee members regarding the nature and format of the concluding observations on reports of States parties. In his opinion, the first step should be to appoint rapporteurs for the reports that would be considered at the current session. At the end of the consideration of a report, the Committee members who participated in the discussions should, if possible, provide a written summary of their recommendations and concerns to the rapporteur. Once the rapporteur had all the relevant information, he would prepare a draft that would be circulated informally among the other Committee members for comments. The rapporteur would subsequently prepare a second draft that he would formally submit to the Committee.
2. Mr. SADI said that, at the end of the Committee's consideration of a report, the Chairman summarized the views of the Committee members. Perhaps that summary could be used as the basis for the concluding observations. In his opinion, it was not possible for one person to reflect all the views expressed in the Committee and, instead of designating one rapporteur, the Committee should appoint three people to prepare the concluding observations on each report of a State party. The three people involved would expand the Chairman's summary on the basis of the Committee's deliberations. Perhaps the persons responsible for preparing the observations could come from different regions.
3. Mr. FODOR said that he fully agreed with the proposal that the person designated to draft the concluding observations should be the person who had prepared the list of issues. However, the Committee should be flexible and, if the person who had drawn up the list of issues was unable to prepare the concluding observations, another person should be appointed. It was also important to designate the person responsible for drafting the concluding observations on a particular report well in advance in order to enable the Secretariat to provide documentation in the language preferred by the rapporteur.
4. The Working Group had proposed that the draft of the concluding observations should be prepared within 48 hours after the conclusion of the examination of a report. Whether or not that time-limit was sufficient would depend on how quickly the Secretariat was able to have the relevant documents translated. If 48 hours was not sufficient, perhaps the time-limit could be extended to 72 hours. Given its current programme of work, the Committee would not have sufficient time to draft concluding observations on the report of Yugoslavia, and he proposed that the Committee should begin consideration of that report on 6 April and conclude its consideration on 8 April.

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5. Mr. SADI, referring to Mr. Fodor's remarks concerning the report of Yugoslavia, suggested that the Committee should use the period between its sessions to prepare concluding observations on reports of States parties considered during the last days of a session.

6. Mr. EL-SHAFEI said that the Chairman's comprehensive summary of the observations of individual Committee members could be used in the drafting of the concluding observations. He did not see any difficulty in the procedure, since the Committee would have the Chairman's summary, and the same rapporteur who took part in the preparation of the list of issues would be involved in the drafting of the concluding observations. Everything would depend on the number of reports before the Committee. In scheduling its consideration of reports, the Committee should bear in mind the time required for drafting the concluding observations.

7. The CHAIRMAN said that, since the Chairman could not always be present during the Committee's consideration of a report, his summary might not include important information. It was therefore preferable to appoint a rapporteur who would be present at all meetings dealing with a particular country report.

8. With respect to format, the Committee must provide clear guidelines for the rapporteurs. Some members of the Committee had suggested that the Secretariat should participate in the preparation of the concluding observations, while others had suggested that the Secretariat should have either no role at all or, at best, a very limited one. If the Committee decided that the Secretariat should take part in the exercise, it must ascertain whether the Secretariat was capable of performing the tasks required of it.

9. Mr. AGUILAR, speaking as Chairman/Rapporteur of the Working Group on article 40, said that, while it was commendable to use the Chairman's summary as a model, the Chairman was not always present at all meetings. The rapporteur responsible for a particular report should attend all Committee meetings at which the report was discussed. The Committee would have to decide what method should be followed in the appointment of rapporteurs.

10. With respect to Mr. Sadi's suggestion that three people should be involved in preparing the concluding observations, the Working Group concluded that, for practical reasons, such a procedure was not possible. Perhaps a compromise could be reached, and one person could be designated to prepare the list of issues while one or two others could provide informal assistance. However, the Working Group considered that it would be best to appoint only one person.

11. Mr. PRADO VALLEJO said that it was difficult for the Chairman to summarize the views of all the members of the Committee, since each member had his own approach and his own particular interests. It was therefore preferable to appoint a rapporteur to prepare the concluding observations in consultation with the other Committee members. The rapporteur should be a

(Mr. Prado Vallejo)

national of the State submitting the report, since he would be most familiar with the situation in the country under consideration and would be better equipped to draft the Committee's observations. The format of the concluding observations should be flexible and should take account of the specific problems facing the State party. Perhaps the Secretariat could appoint a person to attend all Committee meetings devoted to the consideration of a particular report and to assist in compiling the views of Committee members.

12. The Committee should not be too rigid in its approach, since it was only experimenting with a new method of work. Before it took a final decision, the Committee would have to evaluate the results of the new method at its current session.

13. Mr. MAVROMMATIS said that, because of time constraints, there would always be concluding observations that would have to be prepared after the Committee completed its work for a particular session. Those observations would be much better prepared because the rapporteurs would not be bound to a 48-hour time-limit. The Committee should prepare as many concluding observations as was possible during a given session and leave the rest for its next session.

14. The Chairman's summary would always be subjective and was no substitute for an independently prepared report that would be endorsed by the Committee as a whole.

15. The concluding observations could not be prepared without the help of the Secretariat. The Committee should accept the current format for the concluding observations and be flexible in adopting such changes or additions as might prove necessary.

16. Mr. SADI suggested that the concluding observations might be patterned on the Committee's decisions on communications. The documents could include a summary of the submission by the State party, the issues raised by Committee members and the replies by the State party, and the concluding remarks of Committee members indicating areas where responses of the State party had been unsatisfactory. The rapporteur should consult closely with members in preparing the concluding observations, which should be as concise as possible.

17. Mr. EL-SHAFEI recalled that article 40, paragraph 4, of the Covenant governed the work of the Committee on the matter. It appeared that consensus on format was near, and only the method of preparation itself remained to be decided.

18. Mr. WENNERGREN reminded members that the new procedure would be followed on an experimental basis. For the time being, he favoured designation of a single rapporteur, who would consult with other members as needed. Support from the Secretariat would be required to ensure consistency in format. The Chairman's summary would be valuable to the rapporteur as a checklist of issues raised during consideration of reports from States parties.

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19. Mr. MÜLLERSON said that the most important points to be covered in the concluding observations were the Committee's concerns and recommendations, because they provided guidance to States parties on areas where change was needed.

20. Miss CHANET said that she favoured designation of a single rapporteur, who would make the commitment to be present at all meetings during which the relevant report was considered. The assistance of the Secretariat would be needed, but individual Committee members would be responsible for submitting specific observations they wished to have included.

21. Mr. MAVROMMATIS, supported by Mr. Herndl and Mr. Ando, suggested that an additional section, headed "Factors and difficulties affecting implementation", should be included in the concluding observations, following the section headed "Positive developments" in the sample document submitted by the Working Group.

22. Mr. ANDO said that recommendations must be specific, since their purpose under article 40 of the Covenant was to encourage ongoing dialogue with the State party. The concluding observations should reflect the Committee's evaluation of the report and the State party's replies to questions.

23. The CHAIRMAN said that, it appeared consensus had been reached that the sample format for concluding observations on reports of States parties proposed by the Working Group on article 40 should be adopted for use as from the current session, with the addition of a new section, headed "Factors and difficulties affecting implementation". Issues of particular concern to Committee members would be set out in detail, explaining the reasons for concern, and recommendations would be as specific as possible. A rapporteur would be selected in each case to prepare a text in consultation with Committee members and the Chairman, with assistance from the Secretariat, in finalizing the document for submission. The Committee would endeavour to follow the new procedure for all reports taken up at the current session, but it could, if necessary, defer issuing concluding observations on the final report considered at the session. He took it that the Committee agreed to proceed along the lines he had just suggested.

24. It was so decided.

Lists of issues to be taken up in connection with the consideration of reports submitted by the States parties in conformity with article 40 of the Covenant

Second periodic report of Peru (CCPR/C/51/Add.4)

Section I

25. Mr. PRADO VALLEJO said that clarification should also be requested in paragraph (h) on the powers granted to the armed forces and the police during a state of emergency. With regard to paragraph (j), information on efforts to promote public awareness of the provisions of the Covenant and the Optional Protocol in the indigenous community should be included as well.

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26. Mr. AGUILAR, Chairman/Rapporteur of the Working Group on article 40, said that he had no difficulty with the amendments proposed by Mr. Prado Vallejo, although if a reference to the armed forces was to be included in paragraph (h), it should be inserted after the reference to paragraph 32 of the report.

27. Section I, as amended, was adopted.

Section II

28. Section II was adopted.

Section III

29. Mr. AGUILAR, Chairman/Rapporteur of the Working Group on article 40, suggested that the second sentence in paragraph (a) should be amended to read: "Please describe the measures adopted to prevent intimidation of members of the judiciary".

30. Mr. PRADO VALLEJO proposed that a paragraph (d) should be added to the section, requesting information on whether special courts existed in Peru.

31. The CHAIRMAN asked whether Mr. Prado Vallejo was referring to special courts set up under a state of emergency; if so, that issue was covered by section I, paragraph (f).

32. Mr. WENNERGREN said that there could be other types of special courts not set up under a state of emergency, such as military courts.

33. The CHAIRMAN said that he supported Mr. Prado Vallejo's proposal.

34. Section III, as amended, was adopted.

Section IV

35. Section IV was adopted.

Section V

36. Mr. SADI said that there was a trend in some developing countries towards the use of genetic engineering or abortion to prevent the birth of female children. He wondered whether it would be appropriate for the Committee to begin raising that issue; in the case of Peru, for example, the Committee could ask whether the practice existed and, if so, what the State's attitude towards it was.

37. The CHAIRMAN said that the issue was a very sensitive one; it should preferably be dealt with on a personal basis by the members of the Committee, unless the Committee had specific information concerning such a practice in a particular country.

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38. Mr. WENNERGREN said that, as Peru was a Catholic country which, to his knowledge, prohibited abortion, it was perhaps not the best example of what Mr. Sadi had described.
39. The CHAIRMAN said that the matter should be left to Mr. Sadi's discretion.
40. Mr. MAVROMMATIS asked whether there was any reason why paragraph (d) did not refer to "law and practice", as paragraph (c) did.
41. Mr. AGUILAR, Chairman/Rapporteur of the Working Group on article 40, said that there was no reason why those words should not be added for consistency.
42. Section V, as amended, was adopted.

Section VI

43. Mr. PRADO VALLEJO said that the areas of Peru where indigenous communities were located, such as the Amazon and Andean regions, were also centres of the illegal drug trade. He proposed that a paragraph should be added to the section, requesting information on the conditions affecting indigenous peoples in such areas.
44. The CHAIRMAN asked whether the issue raised by Mr. Prado Vallejo would not be more appropriate under section II, pertaining to article 8 of the Covenant.
45. Mr. ANDO said that the amendment proposed by Mr. Prado Vallejo could perhaps be inserted in paragraph (b), after "article 27 of the Covenant".
46. It was so decided.
47. Section VI, as amended, was adopted.

Third periodic report of Colombia (CCPR/C/64/Add.3)

Sections I and II

48. Sections I and II were adopted.

Section III

49. Mr. AGUILAR, Chairman/Rapporteur of the Working Group on article 40, proposed that the second sentence in paragraph (a) should be amended to read: "Please describe the measures adopted to prevent intimidation of members of the judiciary".
50. Mr. PRADO VALLEJO said that, because of the problem of violence in Colombia, measures had been adopted to guarantee the anonymity of judges presiding over trials in drug cases. He wondered whether the Colombian delegation could be requested to explain how the system worked and what problems had been encountered.

51. Mr. AGUILAR, Chairman/Rapporteur of the Working Group on article 40, said that he supported Mr. Prado Vallejo's suggestion. It was important to include a question on that issue, as the performance of judges could not be monitored either by other members of the judiciary or by the public under conditions of anonymity. A new paragraph could be added, to read: "Please provide information on the designation and action of judges in cases where they exercise their functions in secret".

52. Mr. WENNERGREN said that "exercise their functions anonymously" would be preferable to "in secret", as the latter phrase implied the practices of a police State.

53. It was so decided.

54. Section III, as amended, was adopted.

Sections IV and V

55. Sections IV and V were adopted.

Section VI

56. Mr. ANDO proposed that in paragraph (c) the words "special or particular" should be inserted before the word "measures".

57. It was so decided.

58. Section VI, as amended, was adopted.

Second periodic report of Belgium (CCPR/C/57/Add.3)

Sections I and II

59. Sections I and II were adopted.

Section III

60. Miss CHANET said that article 9 should be included in the parentheses after the title of the section.

61. The CHAIRMAN said that the Secretariat had taken note of Miss Chanet's suggestion.

62. Section III, as amended, was adopted.

Sections IV, V, VI and VII

63. Sections IV, V, VI and VII were adopted.

Draft general comment regarding article 10 of the Covenant (continued)
(CCPR/C/42/CRP.3)

Paragraph 8

64. Miss CHANET said that, since paragraph 8 of the draft general comment (now para. 6) referred to the rights provided for in article 10, paragraph 1, of the Covenant, it should be brought into line with the language in that article by replacing the words "detained persons" by "all persons deprived of their liberty". That wording would also cover the treatment of the mentally ill, a question which had arisen in connection with the consideration of recent reports. The Committee also needed to decide whether supervision by independent persons and bodies referred only to penitentiary establishments or to all establishments in which people were deprived of their liberty.

65. Mr. ANDO said that, if the scope of the paragraph was to be extended in the way suggested by Miss Chanet, the meaning of the expression "independent persons and bodies" needed to be more clearly defined.

66. Mr. EL-SHAFEI agreed that a clearer definition was required and also felt that the words "in any case", at the beginning of the fourth sentence, should be deleted, since they weakened the force of the requirement.

67. Miss CHANET pointed out that the notion of supervision by independent persons and bodies had not been in the original text but had been the result of an amendment by Mr. Sadi. Perhaps he could help with the definition.

68. Mr. SADI said that he had simply wished to emphasize the principle involved and did not have any specific definition in mind.

69. Mr. HERNDL wondered whether the supervision of penitentiary establishments referred to the system as a whole or to individual establishments. In the latter case, independent bodies would need to be set up for the supervision of each establishment. Perhaps the provision was attempting to go too far and the paragraph should be deleted.

70. Mr. SADI said that the problem with State supervision of penitentiary establishments was that it offered no guarantee of protection of detainees' rights. In countries where a democratic system did not exist, additional independent supervision was required in order to protect those rights.

71. Mr. MÜLLERSON wondered whether independent bodies of the kind described actually existed in many countries. Was Mr. Sadi referring to non-governmental organizations (NGOs) concerned with human rights and humanitarian matters, and should States be required to encourage the functioning of such bodies? If a country did not have such bodies, did that mean that the Committee considered it to be in violation of article 10 of the Covenant? The Committee had to deal with all countries, both democratic and non-democratic, and he therefore felt that the paragraph in question should be amended or deleted.

72. Mr. SADI said that to delete the safeguard provided for in paragraph 8 would be a setback. Supervision did not have to be totally independent, but non-official, non-governmental supervision must be encouraged, otherwise the vested interests of the State might prevail and there would be no supervision at all.

73. Mr. MAVROMMATIS noted that in his country dual supervision was provided, on the one hand by judges responsible for visiting prisons and, on the other, by an independent body of experts appointed by the Government, including representatives of the bar association, doctors and social workers, who were responsible for ensuring that prison conditions met the necessary requirements. A reference to independent supervision was necessary. Supervision by NGOs would be unacceptable to most Governments.

74. Mr. WENNERGREN said that judges, ombudsmen, or committees of social workers or laymen could be cited as possible examples of independent persons and bodies. There were many different ways of exercising independent supervision.

75. Mr. HERNDL proposed that the third sentence should be amended to read: "The Committee believes that the supervision of penitentiary establishments should be entrusted to appropriate bodies, which should include independent experts."

76. The CHAIRMAN proposed that the third sentence should be deleted and the fourth sentence amended to read: "The reports should contain information about the system of supervision of penitentiary establishments and as to how impartial and independent supervision is ensured."

77. Mr. NDIAYE said that the fact that supervision was independent did not necessarily mean that it was more effective.

78. Mr. MAVROMMATIS felt that the concept of supervision had been misunderstood. It referred to a body of persons visiting prisons and making proposals concerning the improvement of all aspects of prison conditions. It did not imply intervention in the running of the prison. Outside supervision was essential to ensure that prisons discharged their functions in accordance with the Covenant.

79. Miss CHANET said that if the word "independent" posed a problem, perhaps it should be deleted and reference made only to "impartial" supervision.

80. Mr. SADI said that in many countries the judiciary was perceived as being impartial *ipso facto*, whereas in non-democratic countries that was not the case. The aim of independent supervision was to provide an additional safeguard. Perhaps the term "non-official" could be used as an alternative.

81. Mr. NDIAYE said that the idea of impartiality was much more important than that of independence. The main point was that effective control needed to be exercised by impartial authorities.

82. Mr. SADI said that he understood the problems raised by the use of the word "independent" and was therefore willing, reluctantly, to agree to its deletion. However, he would like to see the words "bona fide impartiality" used, since the impartiality must be genuine and not just theoretical.

83. The CHAIRMAN said that he would take it that the Committee agreed to the amendments he had proposed earlier, as subamended by Miss Chanet.

84. It was so decided.

85. Paragraph 8 (new para. 6), as amended, was adopted.

The meeting rose at 1 p.m.



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HUMAN RIGHTS COMMITTEE

Forty-fourth session

SUMMARY RECORD OF THE 1124th MEETING

Held at Headquarters, New York,
on Tuesday, 24 March 1992, at 3 p.m.

Chairman: Mr. POCAR

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Organizational and other matters (continued)

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The meeting was called to order at 3.25 p.m.

ORGANIZATIONAL AND OTHER MATTERS (continued)

Draft general comment on article 10 of the Covenant (continued)
(CCPR/C/42/CRP.3)

Paragraph 9

1. Mr. SADI proposed that a new sentence should be inserted in paragraph 7; it would read as follows: "Prisons and places of detention shall be free of any torture equipment, the availability of which shall constitute incriminating evidence that the State party engages in ill-treatment and torture of prisoners."
2. Mr. ANDO said that although he was sympathetic to the proposal, it would be more appropriate to include such a sentence in the General Comment on article 7, which had addressed the question of torture.
3. Mr. MAVROMMATIS agreed with Mr. Ando, adding that, were the Committee to decide to outlaw instruments of torture, a new Convention would be needed; obviously, that was beyond its mandate.
4. Mr. NDIAYE said that the greatest instrument of torture was the human hand, and the imagination of torturers was unfortunately unlimited, so that there was no point in enumerating their instruments.
5. Miss CHANET agreed that there was no need for such a text. Generally, torture was used to extract confessions from accused persons. In penitentiaries, ill-treatment was the real problem rather than torture.
6. Mr. SADI said that the world's prisons were full of sophisticated implements of torture and insisted that they could not be ignored. Obviously, torture could never be entirely eliminated, but its more obvious forms could be. He did not agree that there would be a need for a new Convention; if such equipment was present, then a violation would exist.
7. The exact placement of his text was of little concern; however, State penitentiaries should be free of implements of torture and the record should show that the Committee was not indifferent to the situation, which was a very serious one.
8. The CHAIRMAN read out the text of paragraph 11 of the General Comment on article 7 as follows: "It should be noted that keeping under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment is an effective means of preventing cases of torture and ill-treatment." He agreed that that was the proper context for Mr. Sadi's concern.

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9. Miss CHANET said that the treatment of prisoners should be considered in connection with the supervision of penitentiary establishments. There would be little point in drawing up a list of implements that should be banned, since any such list would inevitably be incomplete.

10. Mr. SADI said that his purpose was not to prevent torture but to make torture equipment unavailable, and he drew a parallel with gun control. States parties should not have such equipment in their prisons, for if it was there it would be used.

11. After a discussion in which the Chairman, Miss Chanet and Messrs. Sadi and Mavrommatis participated, Mr. ANDO suggested that a second sentence should be inserted in paragraph 11 of the General Comment on article 7. It would read as follows: "In this connection, States parties should see to it that places of detention do not contain equipment liable to be used for ill-treatment or torture."

12. The CHAIRMAN welcomed the suggestion; as Miss Chanet had pointed out, torture was usually inflicted on accused persons during temporary detention and not in prisons.

13. Mr. MAVROMMATIS also welcomed Mr. Ando's proposed text, but suggested that "liable to be used" should be replaced by "that may be used".

14. Miss CHANET agreed with the new proposal, but thought there was still room in the General Comment on article 10 for some mention of supervision as a way of preventing ill-treatment.

15. The CHAIRMAN said that the two were not mutually exclusive. He suggested that Mr. Ando's revised text on implements of torture should be inserted in the General Comment on article 7; Miss Chanet's suggestion - the precise wording of which had yet to be determined - for the prevention of torture through supervision of penitentiary establishments could be incorporated into the General Comment on article 10.

16. It was so decided.

17. Mr. EL-SHAFEI said that paragraph 9, as currently worded, implied that it was acceptable for States merely to bring the various applicable provisions to the attention of personnel with authority over detained persons. In fact it should emphasize the necessity for those provisions to form an integral part of their instruction and training.

18. It was not clear from the second sentence who was responsible for ensuring that arrested or detained persons had access to the information in question. If that duty was left to the prison authorities it might not always be performed. It was vital to ensure that detainees had the possibility of ascertaining whether the appropriate rules were being observed and of gaining legal redress if they were not and that States parties should inform the

(Mr. El-Shafei)

Committee of the access to such redress which was available to detainees. He believed, consequently, that the paragraph should be worded in a more emphatic manner.

19. Mr. MAVROMMATIS said that the paragraph should contain a reference to the obligation of States parties to adhere strictly to all applicable rules in the discharge of their duties.

20. The CHAIRMAN proposed that the paragraph should be reworded to read: "Furthermore, the Committee recalls that reports should mention whether the various applicable provisions form an integral part of the instruction and training of the personnel who have authority over detained persons, and whether they are strictly adhered to in the discharge of their duties." The second sentence was acceptable as it stood. Under the new numbering, the paragraph would become paragraph 7.

21. Paragraph 9, as orally amended, was adopted.

Paragraph 10

22. Mr. NDIAYE said that the paragraph was entirely superfluous and should be deleted.

23. Mr. ANDO disagreed, saying that the paragraph enlarged upon the structure of article 10 and should, therefore, be retained.

24. Miss CHANET, supported by Mr. EL-SHAFFI, said that the paragraph served merely as a transition between article 10, paragraph 1, and article 10, paragraphs 2 and 3, and that elements of the paragraph, in particular the first sentence, could be retained for the purposes of coherence.

25. The CHAIRMAN proposed that the second sentence should be deleted and the first sentence retained; under the new numbering it would become paragraph 8.

26. It was so decided.

Paragraph 11

27. Miss CHANET said that it was inconsistent with the Committee's practice to quote passages from the Covenant *in extenso* and she suggested, therefore, that it would be sufficient merely to refer to the provisions of article 10, paragraph 2.

28. Mr. WENNERGREN suggested adding the words, "in this context" to the second sentence and, in that same sentence, replacing the words "remains applicable" with the word "applies".

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29. The CHAIRMAN suggested that the wording of paragraph 4 of General Comment 9 (CCPR/C/21/Rev.1) could be adopted instead, as it appeared to meet members' concerns more adequately.

30. Mr. WENNERGREN agreed with the Chairman but suggested that the phrase "protected by the presumption of innocence" used in paragraph 4 should be replaced by "enjoying the right to be presumed innocent", in order to emphasize that such treatment was a privilege.

31. The CHAIRMAN proposed that the paragraph should, accordingly, be redrafted as follows: "Article 10, paragraph 2 (a), provides for the segregation of accused persons from convicted ones. Such segregation is required in order to emphasize their status as unconvicted persons who at the same time enjoy the right to be presumed innocent, as stated in Article 14, paragraph 2.

32. Miss CHANET pointed out that although it omitted the qualification concerning special circumstances, the text proposed by the Chairman was, in every other respect, a distinct improvement. Under criminal law, the difference between sentenced and unsentenced persons consisted not only in the presumption of innocence, but also in the different status which they were accorded.

33. The CHAIRMAN proposed that the first sentence of the paragraph should be redrafted in accordance with the wording he had suggested earlier and that the second sentence should remain unaltered. The paragraph would be renumbered as paragraph 9.

34. It was so decided.

Paragraph 12

35. Mr. SADI, referring to the first sentence of paragraph 12 (new paragraph 10), suggested replacing the words "wishes to have" with the word "requires", and adding the words "the operation of" before the words "the penitentiary system", to strengthen the text.

36. Mr. ANDO said, with regard to the last sentence of the paragraph, that the word "success" was too strong and that another term should be found to convey the efficacy of State assistance to prisoners after release.

37. Mr. WENNERGREN said that, although a penitentiary system necessarily involved punishment and exclusion from society, unavoidably exacting society's vengeance against the criminal, he disliked the word "retaliatory" in the second sentence. The sentence generally needed redrafting. Also, the aim of rehabilitation of prisoners put forward in the third sentence was not always attainable.

38. Mr. MAVROMMATIS said that the goal of imprisonment was indeed to exact retribution, not to retaliate, and that exclusion from society was a valid means.

39. Miss CHANET agreed that the word "retaliatory" was inappropriate, and that the text needed clarification. The concept of punishment as sanction should be retained, but the draft comment should make the point that punishment and exclusion from society could not be the essential aim of a penitentiary system. Most importantly, the reference to article 10, paragraph 3, of the Covenant must be maintained, since it was virtually the only normative text in international law establishing that reform and rehabilitation were the essential aim of a penitentiary system. The system itself had an obligation to make that its purpose, although the result could not necessarily be guaranteed in the case of each individual prisoner.

40. Mr. NDIAYE concurred with Miss Chanet that the two policies of retribution and rehabilitation must coexist and that the punitive aspect could not be the sole purpose of a penitentiary system.

41. Mr. SADI suggested adding at the end of the second sentence the clause "but must also endeavour to rehabilitate them in preparation for normal life after completion of their sentences".

42. Mr. WENNERGREN pointed out that rehabilitation was not always desirable, as in the case of persons who had been imprisoned because of conscientious objections or civil disobedience on a point of principle. Perhaps the term ", as appropriate," could be inserted in the third sentence after the word "rehabilitation".

43. The CHAIRMAN observed that the problem in such instances was that persons who should not be in prison had been legally detained.

44. Mr. MAVROMMATIS said that since the modern trend was not to imprison such people, it would be best to ignore that category of prisoners in the text.

45. Miss CHANET, supported by the CHAIRMAN, Mr. HERNDL and Mr. NDIAYE, said that to qualify the aim of rehabilitation by the term "as appropriate" could weaken the Covenant and provide a loophole for any State wishing to use that argument as an excuse.

46. Mr. Sadi's concern could perhaps be addressed by combining the second and third sentences of the paragraph in a way that would balance the expression of the negative aspects of the penitentiary system with the positive aspects enunciated in article 10, paragraph 3, of the Covenant. Accordingly, she proposed that the sentence should be redrafted as follows:

"No penitentiary system should be exclusively punitive or have as its sole purpose the exclusion of the convicted person from society; it should essentially seek the reform and social rehabilitation of the prisoner."

47. Mr. NDIAYE, Mr. MAVROMMATIS and the CHAIRMAN supported her proposal.
48. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt paragraph 12, as amended by Miss Chanet.
49. It was so decided.

Paragraph 13

50. Mr. ANDO suggested that the word "re-education" should be replaced by "education".
51. Paragraph 13, as amended, was adopted.

Paragraph 14

52. Mr. ANDO asked what the reference to categorizing convicted persons meant.
53. Miss CHANET said that the concept was present in many legal instruments relating to the penitentiary system, and referred to the progression followed by the convicted person during the period of detention. In general terms the concept embraced vertical classification, meaning that a prisoner could demonstrate progress in terms of rehabilitation, possibly leading to conditional release, and horizontal classification, whereby, for example, different categories of prisoners would be kept apart. She suggested that the words "medical services" should be added to the enumeration of contacts with the outside world given in brackets at the end of the paragraph.
54. Paragraph 14, as amended, was adopted.

Paragraph 15

55. Mr. MULLERSON said that the reference to "treatment appropriate to their age", which had been taken directly from article 10, paragraph 3, of the Covenant, needed clarification, perhaps by the addition of a list of examples indicating what constituted treatment appropriate to the age of juvenile offenders.
56. Mr. MAVROMMATIS agreed that the paragraph was not explicit enough, and required amendment. Further, the statement that the maximum age of a juvenile offender was to be determined by each State party in the light of the relevant social and cultural conditions was unnecessarily exclusive, since other important factors came into play.
57. Mr. ANDO suggested that the word "moreover" in the second to last sentence should be replaced by "however".

58. The CHAIRMAN said that the text would be amended accordingly, adding that the reference in the first sentence of the paragraph to juvenile offenders could also be usefully expanded, to say "juvenile accused persons and offenders".

59. Mr. HERNDL pointed out that the statement that the Covenant did not indicate the maximum age of a juvenile offender, which was to be determined by each State party, was inconsistent with the sentence that followed, which stated that in the Committee's view every person under the age of 18 should be treated as a juvenile offender.

60. Mr. ANDO suggested that that difficulty could be resolved by deleting the statement to the effect that each State party should determine the maximum age in the light of the relevant social and cultural conditions.

61. The CHAIRMAN said that if the sentence referred to by Mr. Ando was deleted, the next sentence could be reworded to read: "However, the Committee is of the opinion that article 6, paragraph 5, suggests that every person under the age of 18 be treated as a juvenile offender".

62. Ms. CHANET said that the Beijing Rules, also mentioned in the paragraph, emphasized the level of maturity of the minor. While social and cultural conditions were doubtless a factor, reference to them in the paragraph detracted from the focus under the Beijing Rules.

63. Mr. MAVROMMATIS said that his preference was to retain the sentence, but to redraft it to read as follows: "This is to be determined by each State party in the light of social, cultural and other relevant conditions".

64. The reference to the treatment of juvenile offenders should be recast to read: "... juvenile offenders shall be segregated from adults and be accorded treatment, in so far as conditions of detention are concerned, appropriate to their age and legal status ..."; alternatively the Committee should indicate what constituted appropriate conditions of detention.

65. Mr. ANDO suggested that that the relevant sentences should be reworded to read: "The Covenant does not indicate the maximum age of a juvenile offender. While the Committee is of the opinion that article 6, paragraph 5, suggests that every person under the age of 18 should be treated as a juvenile offender, this is to be determined by each State party in the light of social, cultural and other relevant conditions".

66. Mr. HERNDL said that the point the Committee was trying to make was that States should not set the maximum age lower than 18. He suggested that the paragraph should read: "The Covenant does not indicate the maximum age of a juvenile offender. While this is to be determined by each State party in the light of the relevant social and cultural conditions, the Committee is of the opinion that article 6, paragraph 5, suggests that every person under the age of 18 should be treated as a juvenile offender". Such a formulation would

(Mr. Herndl)

leave the matter to the discretion of States parties, while making the Committee's view quite clear.

67. The CHAIRMAN said he would take it that the Committee wished to accept the formulation proposed by Mr. Herndl.

68. Mr. MULLERSON suggested that the reference to treatment appropriate to the age of juvenile offenders could be expanded slightly by including examples of such treatment in so far as conditions of detention were concerned, such as shorter working hours and contacts with relatives.

69. The CHAIRMAN said that the sentence would be reworded to reflect the suggestions made by Mr. Mavrommatis and Mr. Müllerson. He proposed that, for purposes of consistency, the quotation marks in the second sentence of paragraph 15 should be deleted and the sentence rephrased accordingly.

70. Paragraph 15, as amended, was adopted.

71. The CHAIRMAN said that Rapporteurs had been selected to prepare drafts for final observations in respect of the periodic reports before the Committee. Mr. Ndiaye would deal with Algeria, Mr. Aguilar with Peru, Mr. Wennergren with Colombia, Mr. Ando with Belgium and Ms. Chanet with Yugoslavia.

The meeting rose at 6 p.m.